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Supreme Court, U.S.
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CASE NO. ~~04-1~~353

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2004

LAWRENCE MOORE,

Petitioner,

v.

LOCAL UNION NO. 8 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Can a lower court judge (and appeal court judges that did not reverse him) - who swore to uphold the Constitution, and thus federal statutes - award defendants case-wide attorneys' fees and costs, after and because plaintiff appealed summary judgment (granted by distortions of both *law*, and *the facts*), by abusing: 28 U.S.C. § 1927 without *due process* ***"notice,"*** or any ***"hearing"***; and this plaintiff's Constitutional rights both to access the federal courts, and to enjoy his property.

LIST OF ALL PARTIES

Petitioner, and Respondents Local No. 8; Local 8 Retirement Plan & Trust; Toledo Electrical Welfare Fund; Supplemental Fringe Benefit Fund; Electrical Industry Training Trust; Labor-Management Co-op Fund; National Electrical Benefit Fund; Dennis Duffey; Toledo Electrical Benefit Plans Board of Trustees; Richard Clarson; National Electrical Industry Fund; Political Education Fund; National Labor Management Coop Fund; Northwest Ohio Electrical Administrators; Electrical Industry Advancement Program; Substance Abuse Fund; and Safety-Journeyman Education Fund.

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No court opinions were published below.

STATEMENT OF JURISDICTIONAL GROUNDS

District court jurisdiction was proper under 28 U.S.C. §§ 1331, 1337 and 1343. An appeal court reviewed lower court orders under 28 U.S.C. § 1291, and this Court can hear this matter under 29 U.S.C. § 1254(1), and its Rule 10.

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STATEMENT OF THE CASE

The circuit court rejected plaintiff's appeal of a lower court's *ex post facto* $163,145.93 attorneys' fees award, plus interest - pursuant to that district court's earlier threat, in its Order granting "***union***" and its "***Funds***" defendants summary judgment in the case-in-chief - and put toll gates across this "***non-member***" plaintiff's right to access federal courts after officers of the union, certified by federal law to negotiate and administer "collective bargaining agreements" ("CBA") fairly for the *Bargaining Unit* made up of both Union members and "non-members," instead conspired to: (1) secretly pay non-members $5.00 per hour less than union's members; (2) *take* over a third of non-members' CBA wages for *union dues* and *Union special purpose Funds* where they are not represented; (3) *give* non-members' *overtime pay* to employers in amounts equal to Funds' *takings*, *take* "required contributions" (sic) *via* "reciprocity" frauds with other IBEW-affiliated unions and a separate, Wash., D.C. based Internat'l Brotherhood of Electrical Workers ("**IBEW**"); (5) selectively abuse a legally-required CBA *union security clause* to **limit** membership; (6) reject legally-required "fair-share" *agency fees* alternatives to instead extort full "*union dues*" from the non-members' pay; and (7) administer the CBA employers' hiring procedures in 222Union's offices so as to: (a) reserve the CBA out-of-work list preferred status for Union's "members" despite all employees being fungible; (b) reserve CBA "supervisory" jobs for union members; and (c) ensure that non-members are laid off first from the CBA employers' jobs by threats, assaults, batteries, discriminations, blacklistings, internal union charges (without jurisdiction), and default court judgments (after forcing any protesting non-members to leave a CBA-geographical area of union's ostensible"jurisdiction").

Plaintiff's Complaint was filed October 26, 2001 against all Defendants for violating the First and Fifth Amendments by: "taking" a third of his wages for union's "dues," without offering him "membership," or the "agency fees" alternative,

and two sums totalling $20,000.00 a California union sent to Union's Health Fund ("TEWF"), and Pension Plan without giving him any benefits; taking his CBA overtime pay for kickbacks to employers for deducting union and "Funds" takings from his CBA wages; refusing to stop the wrongful "takings"; and refusing to refund any of the "takings."

Those wrongful "takings" were also the nexus of a Fourth Cause of Action against union, and its elected-only-by-union-members CEO Duffey for their breaches of the duties of fair representation ("DFR"), and of the Second, Third, and Fifth Causes of Action, respectively, against all Defendants for common-law frauds and deceit, breaches of contract, and for related intentional inflictions of emotional distress.

A prayer for relief asked that court to order Defendants to refund his money, and affirm that the "takings" are illegal, to declare that they may not use CBA job referral procedures (and a union "hiring hall") to extort any "*takings*" from non-members, that a neutral third party will administer the CBA's job referral procedure and to declare a fourth cause of action may be litigated instead as a "breach of contract" claim.

Plaintiff also asked that court to enjoin union and "Funds" from *taking* non-members' wages until *fair share agency fees* procedures are established, and to require them to notify non-members of their right "to be repaid for years of Defendants' ill-gotten "*takings*," and for any other relief deemed just.

Defendants **answered**, plaintiff served full Interrogatories and other discovery Requests on February 22, 2002, but they responded late (union and Duffy three and a-half months late) and evaded "meet and confers" with that court's help).[1/]

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[1] Plaintiff, Defendants and that judge met only once (in chambers, with no transcript) where each party summed up its case, the judge asked if they *took* his money and said they must return it after they admitted it, but also warned it was "not a class action." That was the only time he was objective, and later arbitrarily re-classified the case to preclude "discovery" and made subjective, *ad hominem* rulings (no findings of fact) against the plaintiff on every issue.

One telephone conference took place five months later, and that

He found proof of Funds' frauds in *minutes* of TEWF's trustees meetings, and seven other Funds in a CBA gotten by threats to charge TEWF and union lawyers in Ohio Supreme Court (which disciplines Ohio lawyers) for unethical acts.[2/]

Plaintiff moved to add those seven "Funds" (**including at least one PAC**), compel discovery responses and continue the discovery cut-off date (he showed Defendants' bad faith), and the union produced a first CBA without sections redacted - showing that union's "members" were approved by internal union committees to receive CBA hourly wages $5.00 higher than "non-members" - which violated the Davis-Bacon Act.

He also moved for sanctions against TEWF Defendants for their bad faith in discovery (only another threat to charge their lawyers in Ohio Supreme Court induced chaos proving that not-then-IRS-approved SFBF's fraud) and later requested sanctions be extended to two other groups of Defendants who would not produce documents promised in *meet and confers*.

That judge then changed the case to *simple* and *expedited*, denied all plaintiff's motions, refused to return it to a proper *complex* track, and granted all of the Defendants' motions for extensions of time to file related oppositions to motions, and

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first-person-Order-writing judge - reputedly a Bar Assoc. president *after* his appointment - living in a same neighborhood as the senior partner of a firm representing big-money TEWF Defendants/*takers* and SFBF (dismissed after an *ex parte* letter) lied plaintiff would not *meet and confer* with their lawyers to avoid accurate records.

[2] Plaintiff served second sets of interrogatories and requests for documents after Defendants' evaded first sets, moved to compel all Defendants to respond fully, stating he would not begin depositions until they responded, and TEWF produced mostly-redacted *minutes showing union hurriedly, fraudulently created Supplemental Fringe Benefit Fund* to defer a $1.00 per hour CBA pay raise - due on the eve of construction projects that needed hundreds of *non-members/ electricians* for the *bargaining unit* represented by Defendant union - into an S.F.B.F. bank account as "required contributions" despite I.R.S. refusals to give required approval of SFBF as a "Voluntary Employees' Beneficiary Association" until eighteen months later.

for extensions of time to move for summary judgment.

Plaintiff filed **Objections** to that court's July 18, 2002 Order, and when a *Pretrial Conference* was rescheduled only by *telephone*, filed a **Memorandum Of Issues** on: arbitrary assignment of the case to an *expedited* track; the prejudicial discovery *cutoff* even as Defendants' motions for extensions of time were granted; whether documents discovered despite Defendants' bad faith, showing SFBF frauds, and the number of defendants warranted return to a **complex** litigation track; whether *expedited* track re-assignment is proper where seven new union Funds that were also *taking* plaintiff's wages were discovered (witnesses and experts also exceed *expedited* track limits), and where court records showed plaintiff originally, properly requested the **complex** track and told Defendants at a case management planning meeting he needed all responses to his *written* discovery requests before he could depose any party or witness. The documents showing SFBF Defendant's frauds were attached to those **Objections**).

Defendants moved for summary judgment (TEWF also moved to dismiss). Plaintiff filed a Memorandum and Fed.R. Civ.P. 56(f) Affidavit in opposition, and TEWF Defendants filed a late "Brief" and an Affidavit opposing his "Motion for Additional Discovery Pursuant to Fed.R.Civ.P. 56(f)" (sic).

November 14, 2002 summary judgment for defendants equated them with the separate "IBEW" to misrepresent: plaintiff worked in union's jurisdiction, must pay its "dues," and got employment *via* **its** (sic) hiring hall; Funds' *takings* were *required contributions* by employers, pursuant to CBAs; he didn't follow "discovery rules" before moving to continue the inappropriate cutoff date and to compel full responses to his discovery requests; union Defendants aren't "state actors" in LMRA § 158(a)(3) roles; there are no limits on LMRA or ERISA *preemption* of frauds, breach of contract (sic) or intentional inflictions of emotional distress; he presented no evidence union's takings were extreme or outrageous; his claims are timebarred; he contends CBAs he works under do not apply to him; that he "is without a meaningful remedy ...

is immaterial"; the union Funds cannot be held accountable for their takings because they aren't "state actors"; Funds defendants represented by the judge's neighbor were "never served"; and Funds' board of trustees and SFBF (represented by his neighbor) were not legal entities "with the capacity to be sued" (please see the Appendix "APX" at pp. 34-41).

A November 22, 2002 Order said Defendant SFBF cannot be sued and repeated a canard that Pension and Health Funds and two other defendants were not served. (APX 43-44.)

That judge's first person Order also threatened to award attorneys' fees against plaintiff if he appealed (APX 41).

An appeal court prevaricated plaintiff is not a "member," invented a "geographical jurisdiction" of that "local union" to misrepresent that he *works on a temporary basis within* it, rather than a *Bargaining Unit*, citing a similar Detroit-based judicial travesty, and *de novo* affirmed summary judgment by that district court (which also misrepresented that "none of the defendants is a 'state actor' for purposes of 42 U.S.C. § 1983," invoked the wrong statute of limitations (APX 38-39), and patronized similar California judicial debacles to award **case-wide fees and costs**) (see below and APX 39, 53 *infra*).

Plaintiff requested reconsideration but the panel concluded that "it acted under no misapprehension of law or fact" (APX 54), and the district court awarded attorneys' fees and costs totalling $163,145.93 to defendants, misrepresenting it is "a frivolous suit by a disgruntled union member against his local union," but admitting that "Following a period of contentious and protracted discovery, the motions of all defendants for summary judgment were granted" (*infra*, at 52-53) and it is,

> "an award in full of all reasonable costs, expenses, and attorneys' fees, including, inter alia, expenses and attorneys' fees related to pre-judgment discovery, preparation and filing of the motions for summary judgment, and preparation and filing of the instant motions and related affidavits for sanctions" (APX 53).

Plaintiff's opening appeal brief's facts showed he can't be sanctioned because: 1) defendants are "state actors," he is not union's "member," all his filings are well-grounded in fact, warranted by existing law and not interposed for improper purpose; 2) he can't be sanctioned under 28 U.S.C.§ 1927 in the Sixth Circuit because he isn't "admitted to conduct cases" under that statute and didn't multiply any "proceedings"; 3) a biased, knowing court sanctioned plaintiff for attorneys' fees and costs defendants incurred in frivolously opposing his *bona fide* suit; and 4) Fifth Amendment due process "notice" and a "hearing" did not accompany the baseless "sanctions."

His reply brief showed no actual "findings of fact" were made that plaintiff's claims were "meritless," that plaintiff knew or should have known it, or that a motive for filing the *bona fide* lawsuit is an "improper purpose" or harassment.[3]

Finally, an appeal court: 1) invalidly begged the questions whether that district court may "punish litigants" who appeal (further begging a question that the appeal is in "bad faith") and appealed to four case-law authorities (one twice) without showing any **factual** relationship to the ostensible "bad faith); 2) did *ad hominem* arguments: "filed a same **baseless** lawsuit at least three times"; he was "notified by **opposing counsel and in the adverse judgments** against him **that his claims lacked merit**"; and a "lower court...considered all **his claims [were] fruitless, vexatious and harassing**" - and brought in **bad faith** - without citing facts; and 3) viciously limited the plaintiff's comprehensive appeal brief to a one-dimensional argument that he had no "**notice of a possibility of sanctions or an opportunity to be heard**," - which, even if true, was an argument that should have been sufficient to prevail alone, where he didn't get *notice* of a "hearing" and none was held.

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[3] In fact that court confronted Defendants during the initial case management conference by asking them repeatedly, "Did you take that money plaintiff says you took from his wages?" - until they admitted it - admonished plaintiff the case is not a "class action," and said he will get his money back, including two "reciprocated" separate lum[illegible]ums totaling $20,000, as well as other "*takings*."

STATEMENT OF FACTS

1. Unions have no "geographical" jurisdiction, and only a "blue sky" jurisdiction similar to fast-food-chain outlets.

2. An IBEW affiliates with unions *certified* by federal law to represent Bargaining Units that also have local "blue sky" jurisdiction to join employers in collective bargaining.

3. Bargaining Units of employees may sign "collective bargaining agreements" ("CBAs") with employers.

4. Local unions *certified* to represent Bargaining Units made up of local unions' members, and non-members include provisions in their CBAs with employers that the unions will administer "out-of-work lists" and "job referral procedures" for the employers in union-controlled "hiring halls."

5. Such *certified* unions that may exclusively represent *Bargaining Units* of employees must offer them *membership*, may not discriminate against them for accepting or rejecting "*membership*," and cannot discriminate against **non-members** (see L.M.R.A. §§ 158(a)(3) and (f) at APX 28, 29).

6. IBEW's "general counsel" law firm takes up an entire floor of IBEW's Wash., D.C. office building and controls it and several other unions and their pension funds, as well as representing a "Building and Construction Trades Division of AFL-CIO" (which is a euphemism for organized crime), and the senior partner of that firm admitted on-the-record, in a U.S. Department of Labor investigation, that discriminatory activities occur in hiring halls administered by local unions affiliated with the IBEW on a daily basis across the country.

7. IBEW and local unions that "affiliate" with it are all *separate* unions bound only by a constitution (sic) contract. *See Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624, 101 S.Ct. 2546, 2551, 69 L.Ed.2d 280 (1981); *Wooddell v. I.B.E.W.*, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991) and APX 19-20.

8. Plaintiff is not and was not a "member" of Defendant union, or two other unions he filed similar laws suits against for *taking* his wages and IBEW's constitution (sic) articulates the only contract he can make for membership (*infra*, p. 20).

SUMMARY OF THE ARGUMENT

District court's sanctions awards are in bad faith (*infra* at p.10). It had no jurisdiction to interfere with plaintiff's appeal (at p.11). There is no merit to the court's baseless award of attorneys' fees and costs against plaintiff (p.12). Detailed findings of fact necessary to show bad faith or that the sanctions were pursuant to either 28 U.S.C. § 1927, or to Rule 11 were never made, and as such are insufficient to permit determination of whether bad faith was demonstrated (12). Plaintiff made no frivolous argument, either in district court or on appeal, his conduct was neither unreasonable nor vexatious, and he cannot be "sanctioned" pursuant to 28 U.S. C. § 1927 because he is not an attorney and is not admitted to and enjoined from conducting cases under that statute (13).

Federal courts may exercise "inherent power" to award fees in "narrowly defined circumstances" when an attorney or litigant has demonstrated "bad faith," but a court must make "findings of fact" that claims advanced were meritless, that he knew it, and that the motive for filing the lawsuit is for an improper purpose such as harassment (15). Sanctions cannot be imposed for appealing, even where the substance of the appeal had no merit when that an appeal was not made for harassment, and there was no indication that this appeal was brought in bad faith, or for purposes of delaying court proceedings in order to obtain an advantage (16). No due process *notice* or *hearing* accompanied district court's abuse of its inherent power to sanction plaintiff for case-wide fees and costs incurred in frivolously opposing the plaintiff's *bona fide* suit (17). Union extorts employers to pay its "members" $5.00 per hour more than the *non-members* it is federal-law-certified to fairly represent, and to collect full dues from non-members (18). He cannot be sanctioned or denied access to federal courts, is not a "member" of this Union - which is a "state actor" as this Court has decided - and federal courts do have "jurisdiction" over union-exactions-of-monies-from-nonmembers as "governmentally compelled fees" (19-25).

REASONS FOR GRANTING THE WRIT

I. This petition should be granted because the appeal court's approval of the lower court's *ex post facto* fees/costs award, and their collusive deprivations of this plaintiff's Constitutional rights, conflicted with decisions by this Court, and other appeal courts, depart from the usual courses of judicial proceedings and require an exercise of this Court's powers of supervision.

The lower court's award of sanctions is in bad faith.[4/] Plaintiff served Complaints on all Defendants, and explained at a January 14, 2002 case management conference he was a *bargaining unit* employee, not a union "member," and was willing to pay fair-share "agency fees," but Defendants *took* full *dues* from his wages with CBA employers' help and took unknown amounts for its internal-union Funds totaling over a third of his wages, plus $20,000 earned in a California "bargaining unit." The judge confronted union Defendants repeatedly with one question, "Did you take the money that plaintiff says you took from his wages?" - until they all admitted to that - and cut off their attempts to excuse the "*takings*," warned plaintiff the case would not be a class-action, and stated that he would get all of his property back.

Instead, no transcript was made, or other hearing held, all "discovery" was cut off, plaintiff's motions were ignored and union (it did not answer any discovery for over three months) and its Funds co-defendants ignored deadlines with impunity, and seven newly-discovered "Funds" escaped when plaintiff's motion to amend his Complaint by adding them was ignored.

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[4] Its award was ostensibly "pursuant to 28 U.S.C. § 1927 and/or th[at] court's inherent power to punish litigants that proceed in bad faith," but *union member* misrepresentations are in bad faith where the court was aware of contrary rulings by the ninth circuit (APX 38) and ostensible "never served" Defendants' fees and costs were awarded for "contentious and protracted discovery" (APX 43, 52).

Rust-belt robbery was embraced, plaintiff was *cautioned, admonished* and cynically sanctioned case-wide fees and costs for appealing a baseless summary judgment (see p.6, *supra*).

That district court had no jurisdiction under 28 U.S.C. § 1927, or its Fed.R.Civ.P. 11 inherent power to interfere with plaintiff's right to access the appellate court. *See Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789, 792 (7th Cir. 1983) (a district court does not have jurisdiction to compel sanctions not expressly reserved or retained on appeal by statute, or by it, or if it did not entertain motions collateral to a judgment, or that would aid in resolution of the appeal). (Citations omitted.)[5/]

The overweening district judge also misrepresented in a December 3, 2003 Order that the appellate court sanctioned plaintiff, and presumptuously, abusively ordered him to be,

> "permanently restrained and enjoined from filing suit in this or any other federal district court without first obtaining prior leave to do so on a showing of good cause to believe that such suit is brought in good faith and states one or more colorable claims for relief."

APX 52-53.

District court also abused its discretion by awarding union Defendants attorneys' fees and costs on the grounds plaintiff had appealed its baseless, bad faith summary judgment.

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[5] Summary judgement granted November 14, 2002 was amended November 22, 2002, a notice of appeal was filed on December 22, 2002, district court's sanctions threat was filed on December 6, 2003 and attorneys' fees and costs award filed January 26, 2004.

An appeal court affirmed that summary judgment September 19, 2003, denied plaintiff's motion for rehearing December 23, 2003, and affirmed district court sanctions on December 8, 2004 - **all without ever receiving a certified record of proceedings below** - denied appellees' motions for sanctions on appeal January 7, 2005, and a mandate issued January 25, 2005 (APX 49-51, 56-59).

There was no merit to the lower court's awards of fees and costs where no facts showed plaintiff needlessly delayed *ongoing* litigation or engaged in dilatory litigation practices.

Congress enacted 28 U.S.C. § 1927 "to deter unnecessary delays in litigation." *Id.*, at 794, *citing* the House Conference Report No. 96-1234, 96th Congress 2d Session, Reported in 1980 U.S.Code Cong. & Admin.News 2716, 2781 at 2782.

Before imposing sanctions the court must find **willful bad faith**. *Williams v. Giant Eagle Markets, Inc.*, 883 F.2d 1184 (3d Cir. 1989). The conduct must be viewed objectively and manifest intentional or reckless disregard of duties to the court. *Braley v. Campbell*, 832 F.2d 1504 (10th Cir. 1987). Before a court may assess fees for bad faith the claim filed must lack plausible legal or factual basis. *Knorr Brake Corp. v. Harbil, Inc.*, 738 F.2d 223 (7th Cir. 1984).

Detailed "findings of fact" are necessary to justify sanctions. *Burges v. Murphy*, 692 F.Supp. 1571 (S.D.N.Y. 1988). Whether the plaintiff acted in "bad faith" is a factual determination. *Hackman v. Valley Fair*, 932 F.2d 239 (3d Cir. 1991; *Kanarek v. Hatch*, 827 F.2d 1389 (9th Cir. 1987); *In Re TCI Ltd.*, 769 F.2d 441 (7th Cir. 1985).

The record is devoid of any finding of fact whether the sanctions were pursuant to 28 U.S.C. § 1927 or Rule 11, and as such is insufficient to permit determination of whether bad faith was demonstrated. *U.S. v. Int'l Broth. of Teamsters*, 948 F.2d 1338 (2d Cir. 1991).

Court inabilities to differentiate between Rule 11 and 28 U.S.C. § 1927 in imposition of sanctions, and without giving "notice" of the applicable statute, justifies a decision to vacate the entire Order, and to remand the case. *Jones v. Pittsburg Nat. Corp.*, 899 F.2d 1350 (3rd Cir. 1990) (lower court did not identify and relate ostensible violations in ways that would permit meaningful appellate review with respect even to Rule 11); *In re Aknos Installations, Inc.*, 834 F.2d 1526 (9th Cir. 1987); *In re Rubin*, 825 F.2d 977 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1108.

Imposition of sanctions should be remanded to the court

for specification of the authority on which it had relied, and for the particular conduct meriting such sanctions. *Caltrade Intern., Inc., v. U.S.*, 973 F.2d 128 (2d Cir. 1992).

Plaintiff made no frivolous argument, either in district court or on appeal, and no unreasonable or vexatious conduct by him was ever identified, he never failed to prosecute his claims, did not defy any Order, appeared once in person and once by telephone (the only opportunities he was afforded), made no false statements, *served all Defendants* (a November 22, 2002 Order misrepresents that he did not), there were no "counterclaims," and he insisted on only one condition: that written "discovery" be answered prior to depositions but that court even helped Defendants evade his motion to compel.

Plaintiff cannot be sanctioned under 28 U.S.C. § 1927 because he isn't admitted to conduct cases under that statute, he did not multiply any of the "proceedings" and every filing he made is well-grounded in fact, warranted by existing law, and not interposed for any improper purpose.

Summary judgment is based on misrepresentations that Defendants weren't "state actors" and *that plaintiff*, who was not Defendant union's member *is a member*, and is an error of law based on assessments of evidence the union and Funds Defendants abused to multiply the proceedings in bad faith.

> Any attorney or other person admitted to conduct cases ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927.

Such sanctions may not be imposed against non-attorneys "because the statute applies only to attorneys." *See Chambers v. NASCO, Inc.*, 111 S.Ct. 2125, 2131 (1991). *Sassower v. Field*, 973 F.2d 75 (2d Cir. 1992), *cert. denied*, 113 S.Ct.

1879, 123 L.Ed.2d 497, *re-hearing denied*, 113 S.Ct. 2952, 124 L.Ed.2d 698 (this statute only permits imposition of fees on an "attorney or other person admitted to conduct cases" before the courts). An attorney is liable under 28 U.S.C. § 1927 solely for those excessive costs resulting from violative conduct). *Please see Riddle v. Egensperger*, 266 F.3d 542, 547, 553-556 (6th Cir. 2001), *citing In re Rubin*, 825 F.2d 977 (6th Cir. 1987) (a district judge has inherent equitable power to award attorneys' fees for ***bad faith*** or for ***frivolous*** conduct of a case, and 28 U.S.C. § 1927 provides for awards of attorneys' fees where an attorney "multiplies the proceedings in any case unreasonably and vexatiously"; *Jones v. Continental Corp.*, 789 F.2d 1225, 1229 (6th Cir. 1986) (conduct is reviewed for unreasonable and vexatious' multiplication of litigation); *U.S. v. Int'l Broth. of Teamsters*, 948 F.2d 1338 (2d Cir. 1991); *Hill v. U.S.*, 599 F.Supp. 118 (D.Tenn. 1984); *Jackson v. Yellow Technology Services, Inc.*, 988 F. Supp. 1399 (D.Kan. 1997); *Wood v. Brasse U.S.A., Inc.*, 149 F.2d 44 (S.D.N.Y. 1993); *In re Aurora Investments, Inc.*, 144 B.R. 899 (M.D.Fla. 1992).

Under § 1927 a court must review whether the attorneys engaged in conduct which multiplied litigation unreasonably or vexatiously. *Riddle v. Egensperger*, 266 F.3d 542, 553 (6th Cir. 2001), finding,

> "A sanction is generally improper where a successful motion could have avoided any additional legal expenses by defendants."

Id., citing In re Rubin, 825 F.2d 977, 988 (6th Cir. 1987).

> Fees awarded are limited to expenses reasonably incurred to meet the other party's groundless, bad-faith procedural moves, not the party he represents.

In re Usoskin, 61 B.R. 869 (E.D.N.Y. 1986). *See Roadway*

Express, Inc. v. Piper, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980) (The statute authorizes only excess costs incurred by an attorney's unreasonable conduct - and the unreasonable and vexatious conduct must be identified).

> "A district judge should not await the aggregation of ... multiple acts of misconduct without at least warning the attorneys at the time of each act ...."

In Re Rubin, 825 F.2d at 990.

Federal courts may exercise inherent powers to award attorneys' fees in "narrowly defined circumstances." *Tiedel v. N.W. Mich. Coll.*, 865 F.2d 88, 93-94 (6th Cir. 1988). When an attorney or litigant has demonstrated bad faith in the conduct of litigation, the court has the inherent authority to assess an award of attorneys' fees. *See Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765-66 (1980). Imposition of sanctions comes from the court's power to police itself, so that a court can vindicate its authority without resorting to a finding of contempt of court. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991). If the district court uses its inherent powers to sanction, it must find that the questioned conduct constitutes or is tantamount to bad faith. *Roadway Express, Inc.*, 447 U.S. at 767.

To award fees under the bad faith exception to the American Rule a lower court must make actual **"findings of fact"** that the claims advanced below were "meritless," that counsel knew, or should have known it, and that the motive for filing the lawsuit was for improper purposes such as harassment. *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308 (6th Cir. 1997). That was not done here - or even attempted - because the claims have merit (see *infra*).

The court's Order granting sanctions and restraining and enjoining plaintiff's protected right to access federal courts is combined with first-person Orders containing no finding of fact or valid reference to standards of law (APX 34, 52, 55).

Sanctions can't be imposed for appealing a lower court, even when the substance of such an appeal is unmeritorious, where there was no indication that the appeal was brought in bad faith or for the purpose of delaying court proceedings in order to obtain an advantage. *T.W. Electric Service, Inc. v. Pac. Elec. Contractors Ass'n*, 807 F.2d 626 (9th Cir. 1987). Here plaintiff's case below, and the appeal **are** meritorious.

District court refused plaintiff's request to return this case to the "complex" track, after it arbitrarily removed it to limit union Defendants' discovery responses, ignored his "motions to compel" responses to his Interrogatories, and Requests For Production of Documents and Admissions, and it delayed and denied plaintiff's motions to add newly discovered Funds and to extend a new "discovery" deadline shortened by assigning it to a "simple" litigation track that it did not qualify for. Plaintiff did not "multiply proceedings," but Defendants filed voluminous off-point papers in "bad faith" non-responses to all of the plaintiff's *bona fide* discovery requests.

"A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law, or on a clearly erroneous assessment of the evidence." *See Cooter & Gell v. Hartmarx Corp.*, 110 S.Ct. 2447, 2461 (1990) (the district court must apply correct legal standards, and must offer substantial justification for its finding of an F.R.Civ.P. 11 violation, and expenses incurred in defending a sanctions award on appeal are governed by Fed.R.App.P 38).

The lower court's *ex post facto* caution to the aggrieved plaintiff, to not appeal, was in its summary judgment Order. Plaintiff moved to correct wrong discovery cut-off dates, to compel full "discovery responses," and for sanctions against the "TEWF" Defendants' lawyers, but district court instead awarded Defendants $106,009.68 in fees and costs, as well as approx. $58,000.00 to Union and other Funds Defendants.

Defendants' filings distorted facts and mis-cited case law, and plaintiff cannot be sanctioned for appealing from a court that distorted the record, made no findings of fact to support rulings, and may not preempt a right to access appeal courts.

No *notice* or *hearing* accompanied the courts' abuses of their inherent power to sanction plaintiff for attorneys' fees, and Defendants incurred costs only in frivolously opposing plaintiff's *bona fide* suit to recover property stolen by them.

District court and circuit court misrepresent plaintiff is a "member" and union isn't a "state actor" to justify *taking* his property as Union "dues" and for its special purpose "Funds" and denied appeals from this instant district court case on the merits, despite their "responsibility to do justice [and] give him a fair day in court." *See Gill v. Stolow*, 240 F.2d 669-70 (2d Cir. 1957) (**per Clark, J.**, author of federal rules).

> Certain implied powers must necessarily result to our Courts of justice from the nature of their institution ... because they are necessary to the exercise of all others.

See United States v. Hudson, 7 Cranch 32, 34, 3 L.Ed. 259 (1812). But the Supreme Court has also clearly stated,

> A court must, of course, exercise caution in invoking its inherent power, and must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees. (Emphasis added.)

Chambers v. NASCO, 111 S.Ct. 2123, 2136 (1991), *citing Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980)(the Fifth Amendment establishes Constitutional limits on the courts' inherent power); *Societe Internationale v. Rogers*, 357 U.S. 197 (1958) (the Fifth Amendment pre-empts the courts' inherent powers to sanction). "Due process" means some kind of "hearing," and "notice." *Fuentes v. Shevin*, 407 U.S. 67, 80-83 (1972) (a right to notice and opportunity to be heard "must be granted at a meaningful time and in a meaningful manner"). (Citations omitted.)

Union extorts CBA employers to pay its members $5.00 an hour more than *non-members* it is certified by federal law to fairly represent and to collect full dues from non-members - which is evidence, with the Funds' frauds, that this suit was neither unreasonable, frivolous, vexatious, malicious, or in bad faith. The record does not **speak for itself** as stated in the court's Order, plaintiff is not a "member," or disgruntled and the lower court's threat to sanction him for seeking relief in the proper appeal forum is not "advice" as it pontificated. "Duties" must accompany rights given unions by federal law.

Access to the proof must be seriously considered when granting summary judgment where, as here, the crucial facts are within the control of moving Defendants. *White Motor Co. v. United States*, 372 U.S. 253, 83 S.Ct. 696, 9 L.Ed.2d 738 (1963); *Poller v. Columbia Broadcasting Sys.*, 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962); *In Re Edmond*, 934 F.2d 1304 (4th Cir. 1991) (defendant may not selectively offer affidavits ostensibly supporting "facts" while using the facts and law to forestall discovery).

District court should not have ruled that the plaintiff must tolerate Defendant union's *takings* of his property in violation of L.M.R. A. § 158(a)(3), and § 302 (29 U.S.C. § 186), and that court should not have granted that Union and its Funds a summary judgment that deprived the plaintiff of the fact-specific opportunity to show that he is not union's "member" and that its Funds "takings" of his wages were not "required contributions" (sic) by the CBA employers.

The overweening district court conditioned its sanctions only on whether plaintiff ***appealed*** its summary judgment and made its punitive awards only after it was informed that the appeal court would also make a punitive award against him - as stated in its Order, at APX 51 - but it did not (APX 58).

District court had no jurisdiction, after a notice of appeal was filed, to follow up its threats of attorneys' fees and costs against plaintiff for appealing its baseless summary judgment. Defendants merely distorted the two courts' blatantly abusive reasons for sanctions, and cited factually inapposite case law.

Plaintiff cannot be validly sanctioned because he is not a "member" of defendant union, which is a "state actor," and every filing he made is well-grounded in facts, warranted by existing law, and not interposed for an improper purpose.

Union "takings" are an "out-right seizure" of plaintiff's property without "notice," a "hearing," or due process of any kind, and both courts knew he is not Defendants' "member."

The district court purported to issue an injunction barring further litigation by plaintiff permanently, without its "prior approval," and **purported to encompass all district courts,** and also invited the Defendants to file affidavits stating their costs, expenses and attorneys' fees up to and on December 20, 2003, the week after that Order was written (APX 52).

The right of access - basic to our system of government - is a fundamental right protected by the Constitution:

> The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.

Chambers v. Baltimore & Ohio Railroad, 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907); *See Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

Union defendants' agenda was to approve the "takings" of plaintiff's property without statutory-required "membership" offers or "agency fees" alternatives, but it has evolved into punitive attempts to pile on frivolous costs awards unrelated to fictional "bad faith procedural moves" never shown.

Union defendants admit plaintiff was not its "member" in their Answer to plaintiff's Complaint, because he was not offered "membership" (despite the CBA union security clause and L.M.R.A. §§ 158(a)(3) and (f)), he never applied for it, and wasn't accepted, despite both courts' misrepresentations. The courts are back-dooring regressive, tribalistic arguments this Court already rejected in *Wooddell v. I.B.E.W. Local 71*, 502 U.S. 93 (1991). However, it is clear that the IBEW union and the Defendant union are separate unions having a "contract" called an "IBEW Constitution" (sic) that states,

> The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U., and the I.B.E.W., and between such member and all other members of the I.B.E.W.

IBEW Constitution, Article 20, Section 3. No contract exists between Plaintiff and a foreign local union ("L.U.") he never applied to and was not admitted to, such as Defendant union.

Defendant union and its Funds are "state actors," and violated the Constitutional rights of this "Bargaining Unit" employee by taking over one third of his wages for union's "dues" and "special purpose Funds," and his $20,000.00.

The underlying suit had a legal and factual basis, and the lower court that produced no "facts" to support either its summary judgment, or baseless awards of fees and costs also misrepresented the legal and factual basis for plaintiff's suit, and did not send even a biased appeal court a certified record of the proceedings below. Sanctions are limited to situations where a suit is without legal or factual bases, but that is not so here - where the court instead relied on misrepresentations that plaintiff is union's "member," and that union defendants did not abuse L.M.R.A. § 158 to *take* plaintiff's property. It is very clear that the lower court has abused its discretion in exercising its power to assess fees and costs against plaintiff.

This case arose under the First and Fifth Amendments of the U.S. Constitution, the Labor Management Relations Act ("L.M.R.A.") § 158(a)(3) (29 U.S.C. § 158), and L.M.R.A. §§ 301 and 302 (**the paycheck protection law**)(29 U.S.C. §§ 185, 186) after Defendant union and its special purpose funds took plaintiff's wages earned under a CBA with employers. Union is the "exclusive representative" of a Bargaining Unit of its members and *citizens* who do not belong to that union.

Defendant union's *certified* CBA status is unquestionably,

> "caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible .... [and] the party charged with the conduct [is] a person [and/or an entity] who may fairly be said to be a **state actor** ...." (Emphasis added.)

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982). Plaintiff isn't a member as Labor-Management Reporting and Disclosure Act §§ 2, 3 (o) and 101 (*supra*, p.8, 1-8) define, but union Defendants are "**state actors**" and violated rights of a "Bargaining Unit" employee/non-member by taking a third of his pay for union "dues, and for its "special purpose Funds" (*supra*, p.8).

There is no doubt plaintiff's Complaint was well-grounded in law as decided by this Court's decisions from *Brotherhood of Railway, etc. v. Allen*, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235 (1963) to *Beck*; or that plaintiff did everything possible to discover the "facts" he needed to expose union's duplicities (e.g., "required contributions," and "traveling member") that are tailored to confuse a jury and underlie the thefts of many $millions of dollar$ from CBA employees; or that union **takings** also support attorneys' bad-faith evasions of discovery, and distortions of law (warranting sanctions).

Because of the U.S. Constitution Union must include "fair share" *agency fees* provisions in CBAs it signs, and it must

extend its unilateral "security clause" *membership* offer to "non-members" or they have no duty to pay Defendant union any monies. Union has no CBA standing that can allow it to unilaterally include its internal union "Funds" or "security clause" in the "Bargaining Unit" parties' CBAs.

Orders granting summary judgment and a punitive award of attorneys' fees and costs below are grounded in the courts' refusals to grant *stare decisis* effect to this Court's decisions in *Communication Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988), in this case, and are rulings of law erroneously equating "*membership*" in a separate IBEW with "*membership*" in this Defendant union.

This Court, in *C.W.A. v. Beck*, affirmed rulings that:

> "(1) courts had jurisdiction over claims that exaction of agency fees beyond those necessary to finance collective-bargaining activities violated the judicially created duty of fair representation and nonunion members' First Amendment Rights."

Communication Workers of America v. Beck, 108 S.Ct., at 2642 (1988).

This Court thus reinforced its pragmatic decision to avoid Constitutional decisions where a different option, pursuant to statutory constructions, was possible,

> Accordingly, in Street we interpreted § 2, Eleventh to avoid the serious constitutional questions that would otherwise be raised by a construction permitting unions to expend **governmentally compelled fees** on political causes that nonmembers find objectionable...., and we therefore need not strain to avoid the plain meaning of § 8(a)(3) as we did with § 2, Eleventh. (Citations omitted.) (Emphasis added.)

C.W.A. v. Beck, 487 U.S., at 761. 108 S.Ct., at 2656-57.

The Court held § 8(a)(3), like § 2, Eleventh, authorizes only exaction of the fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *C.W.A. v. Beck*, 108 S.Ct. 2641, 2657 (1988).[6/]

Union may not bribe CBA employers to deduct union's and Funds' *takings* from wages of "non-members" who have no access to union's closed-to-"non-members" meetings, in amounts approved only by the union's "members," by letting CBA employers also "*take*" the non-members' overtime pay in amounts equal to the Union's takings. *Supra*,p.9.

It is a "fact" that Defendant union's hidden-from non-members CBAs contain "**bad faith**" provisions that subvert the letter and intent of the Davis-Bacon Act by having CBA employers pay union members $5.00 per hour more than Bargaining Unit **non-members** and letting CBA employers keep amounts that would ordinarily be included in overtime pay if Funds' *takings* from hourly wages did not pre-empt it by violating the Labor-Management Relations Act.

Union may not extort *dues* from non-members' wages by abusing its *dual role* as administrator of CBA employers' job Referral Procedure. Union's primary *dual role* is as the *federal-law-certified exclusive representative* for employees' Bargaining Unit, in negotiating and administering CBAs, and its third *dual role* is administering the employees' grievance procedure. Union *per se* - not in a *dual role* - self-servingly included a private *union security clause* into employees' CBA (pursuant to §§ 158(a)(3), and (f)(2) of a Labor-Management Relations Act passed by Congress to end such "compulsory union" practices), and also included token references to its private, arcane "special purpose funds" into those CBAs. **Union may not "take" non-members' wages for its Funds**. *Beck v. Communications Workers of America*, 468 F.Supp. 93 (1979), *aff'd*, 776 F.2d 1187 (4th Cir. 1985); *en banc*

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[6] *Beck* used outdated "NLRA," rather than "L.M.R.A." citations.

800 F.2d 1280 (1986); *Communication Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988). As this Court clearly reasoned from that dispute,

> Respondents ... claim that the union failed to represent the[m] ... by negotiating and enforcing an agreement that allows the exaction of funds for purposes that do not serve their interests and in some cases are contrary to their personal beliefs. The necessity of deciding the scope of § 8(a)(3) arises because *petitioners* seek to defend themselves on the ground that the statute authorizes precisely this type of agreement.

Id., 108 S.Ct. at 2647-48. This Court then decided that,

> "obviously, once...determined that the dues were not for collective bargaining purposes [or] 'for the maintenance of the [union] as an organization [the Funds] could be terminated without affecting the continued existence of [the union] as the bargaining representative.'"

At 2652-53, n.7. A duty of fair representation exists in Constitutional claims litigated instead under LMRA § 158(a)(3) because federal courts have "jurisdiction" over union-exactions-of-monies-from-nonmembers as "governmentally compelled fees." *Id.*, 2656-57, *citing Railway Employees v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed 1112 (1956) (R.L.A. preemption of state laws banning union security agreements involves governmental action); *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961) (R.L.A. § 2, Eleventh limits union exactions from non-members to collective bargaining activities).

The instant union Defendants also dishonestly ignored the Court's holding in *Chicago Teachers Union, Local No. 1 v.*

Hudson, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d (1986). (procedural safeguards must be carefully tailored to prevent further union violations of such non-union employees' First Amendment rights in paying the required "agency fees").

When unions' "takings" of wages of CBA "non-members" were opposed unions appealed to federal courts' ostensible authorization by the Congress to create bodies of labor and ERISA common law to subvert their Constitutional rights and exculpatorily approve outright: thefts; frauds; extortions; assaults; batteries; blacklistings; discriminations; internal union "charges" against non-members (without jurisdiction); and default court judgments (after forcing them to leave the Bargaining Unit). *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957); *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 403, 108 S.Ct. 1877, 1880, 100 L.Ed.2d 410 (1988).

This Court decided in *International Assoc. of Machinists v. Street*, 367 U.S. 740 (1961) that "exactions" of monies not necessary for the "collective bargaining" functions of a union violated the Constitutional rights of the workers who are not members to be free of "compulsory unionism" under R.L.A. § 2, Eleventh, and that decision is also controlling on suits by "non-members" against unions regulated by L.M.R.A. § 158(a)(3) (29 U.S.C. § 158(a)(3)). *See Communications Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988) (also affirming the district court and appellate courts' holdings below).

In response to union Defendants' reliance on invalid *ad hominem* attacks, question-beggings and their other illogical arguments plaintiff defended his claims as well-grounded in the doctrines of *res judicata* and *stare decisis*, and clearly showed that the decision of the district court, and a Michigan district court these Defendants also speciously, prolifically cited, are aberrations of both the facts, and controlling law.

The instant Ohio district court, and the Ohio-based Sixth Circuit obviously believe they have rights to support regional entities that prey economically on workers and non-residents.

CONCLUSION

No evidence shows any attempt by plaintiff to vexatiously or unreasonably multiply proceedings below, or on appeal.

The district court ignored plaintiff's copious statements of facts, supported by law, in making arbitrary decisions, but he detailed law and facts proving **he wasn't Union's "member"** to appeal that lower court's summary judgment and sanctions while the union Defendants' filings, in direct contrast, were consistently patronizing, "frivolous," and in "bad faith."

Defendant union colluded with and bribed CBA employers (by letting them take money equal to its "takings" from CBA overtime pay) to take its Funds' required-contributions (sic), and full union dues from "non-members'" pay, and internal-union Funds' provisions should not even be in the CBA.

Non-member plaintiff didn't agree to *defer* any of his pay to union Funds having no *standing* to take non-members' pay and **taking** their pay makes them "victims" of a small *clique* that controls union "meetings" (IBEW's internal-union NEBF designated "agent" without-CBA-*status* extorts another 5% of the wages negotiated by local unions it *affiliates* with).[7]

Plaintiff never *authorized* a union Fund to abusively steal his pay and $20,000, or to lie about *"reciprocity agreement"* status (there is none) by producing reams of non-responsive papers in "discovery," but he was sanctioned for appealing a summary judgment so devoid of facts that the district court would not send the appellate court *a certified copy* of its own record, and ordered plaintiff to pay thieves who took his pay **despite Union's Answer admitting he is not its "member."**

Further, and despite district court referring to that appeal court's threats to also award costs, **that circuit court later declined to make any such award** (APX 34-43, 48, 49-59).

Lawrence Moore

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[7] That National Electrical Benefit Fund, like other Funds that have a *National* prefix before their names, is actually controlled by that organized-crime dominated, Wash., D.C. based, "I.B.E.W." union and was successfully sued by a U.S. Secretary of Labor over a $50 million$ theft that enriched Democrat Party chairman MacAuliffe.

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Labor Management Relations Act § 158 (29 U.S.C. 158)

(a) Unfair Labor practices by employer

(3) It shall be an unfair labor practice for an employer - by discrimination in regard to hire or tenure or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) **to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later**, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(f) Agreement covering employees in the building and construction industry

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction industry employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making if such agreement, or (2) **such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later**, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a)(3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

* The clauses referred to here, and in § 158(a)(3) are CBA "union security clauses" requiring employees to join unions.

Labor-Management Reporting and Disclosure Act

Declarations of Findings, Purposes, and Policy:

Sec. 2(b). (29 U.S.C. 401) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplemental legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce ....

Definitions: Sec. 3(o). (29 U.S.C. 402)

For the purposes of titles I, II, III, IV, V (except § 505), and VI of this Act - "Member" or "member in good standing" when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership ....

Title I - Bill of Rights of Members (29 U.S.C. 411):

Sec. 101(a)(1). Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections ..., to attend membership meetings and to participate in the deliberations and voting ... subject to reasonable rules and regulations ....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
1125 Fifteenth Street, N.W.
Washington, D.C. 20005

TO ALL IBEW LOCAL UNIONS IN THE UNITED STATES AND CANADA:

Dear Sisters and Brothers:

Some questions have recently arisen about the meaning of the amendment of Article XXIV, Section 1, of the IBEW Constitution, at the 1996 Convention. The purpose of this letter is to provide you with my interpretation, pursuant to my authority under Article IV, Section 3(2), of the IBEW Constitution, of the meaning of amended Article XXIV, Section 1. I want to make certain that there is a uniform interpretation and application of this provision throughout the Brotherhood.

The old Article XXIV, Section 1, had the same rule for a member traveling, or visiting, a Local Union, and said that both *"shall"* be admitted to its meetings. The clear intent of the amendment offered by Local Union 1049 was to change the *"shall"* to *"may"* and specify that both the traveling and visiting member would have no voice or vote. Under the substitute resolution submitted by the Law Committee, there are separate provisions for members working in a different Local's jurisdiction and a member visiting a different Local.

With respect to the *visiting* member the new language clearly states that he or she "may" be admitted to the meeting - at the option of the Local union in question - but without voice

(Several erroneous statements made during the debate about legal requirements are likely to have confused the issue, and it is in part for that reason that I find it necessary to provide this interpretation for the new provision.)

or vote. Under the amendment, a member *working* in a different Local's jurisdiction *"shall"* be admitted to its meeting *(as under this provision before the amendment)*, but that paragraph is silent with respect to whether the traveling member has a voice or vote.

Based on the language of the amendment, offered by Local Union 1049, and the essence of the discussion during the debate on the amendment, it is my interpretation that although the traveling member has the right to attend a Local Union meeting, **he does so without voice or vote.**

In sum, Article XXIV, Section 1, is interpreted as follows:

1. A *traveling* member working in another Local union's jurisdiction *shall* be admitted to its meetings. he is not, however, a member of the second Local Union because of this amendment. Nor is he entitled to voice or vote on collective bargaining agreements or any other issues, and he most certainly is not eligible to vote in internal elections within that Local Union.

In other words, there are no rights granted to the traveler other than having the right to attend the Local union meeting. As noted above, the intent of the two paragraphs in this section is only to distinguish between a traveling member employed in the Local union's jurisdiction and a visiting member not employed in the Local union's jurisdiction.

2. When a member wishes to *visit* a different Local Union, that Local Union *may* - but is not required to - admit that member to its meetings. The visiting member has no voice or vote at the meeting.

Dated: May 5, 1997

J.J. Barry
International President

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01-7556
	)	
Plaintiff,	)	
v.	)	ORDER
Int. B'hood of Elect.	)	
Wkrs. Local 8, et al,	)	
	)	
Defendants.	)	

This is a suit by a member of the International Brotherhood of Electrical Workers (IBEW). For about twenty years, plaintiff Lawrence Moore had been a "traveler" - i.e., he has worked within the jurisdiction of various IBEW local unions in various areas of the United States. As a result of his membership in the IBEW, plaintiff is obligated to pay union dues, and is otherwise subject to the provision of the Union Constitution and agreements entered into between the union and employers. Thus, when plaintiff works for an employer bound by a collective bargaining agreement, he is bound by that agreement.

Plaintiff worked briefly for three employers as an electrician, obtaining his employment through a hiring hall maintained by IBEW Local 8 (Local 8). The employers, and hence, the terms and conditions of plaintiff's employment with those employers, were covered by a collective bargaining agreement.

Pursuant to that agreement, the employers make fringe benefit contributions to employee benefit funds, including the defendant National Electrical Benefit Fund, Labor Management Cooperation Committee, inc., and Toledo Joint Apprenticeship Training Trust Fund (collectively, "Defendant Funds" or "Funds"). The employers made those contributions, pursuant to the collective bargaining agreement, directly to the Funds.

The fact that the employers made those payments directly to the Funds, rather than to the plaintiff, is the basis for this litigation. Plaintiff claims, inter alia,that the defendants

converted his wages and violated his federal constitutional rights and the Labor Management Relations Act when they agreed to such method of payment of fringe benefit contributions without granting plaintiff a vote on participating in the Funds. In addition, the plaintiff claims that the Funds violated his constitutional and statutory rights by refusing to apply prospectively, from the date of receipt, employee benefit contributions made on his behalf to other welfare funds in other IBEW locals' jurisdiction and transferred to the Funds at his request.

Plaintiff also alleges that the Funds have breached the collective bargaining agreement, conspired with other defendants to deprive him fraudulently of money, and intentionally inflicted emotional distress.

For the reasons that follow, I find that there can be no genuine disputes of material fact and I conclude that there is no merit to plaintiff's claims. The motions for summary judgment filed by the defendants shall accordingly, be granted.[1]

Plaintiff has filed a motion to continue the discovery cutoff date and compel discovery and for sanctions. For the reasons that follow, that motion shall be denied.

1. Plaintiff's Motion to Continue Discovery, etc. and Defendants' Motion to Strike

Plaintiff has filed a motion to continue the discovery cutoff date and compel discovery and for sanctions. (Doc. 40). In addition to opposing the motion, the defendants have moved to strike the plaintiff's motion for failure to comply with the local rules relating to discovery disputes. (Doc.53). The defendants' motion shall be granted and the plaintiff's motion shall be denied.

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[1] This is not the first instance in which claims such as those made by plaintiff in this case have been found to be without merit. Local 8's motions for summary judgment lists several other cases in which plaintiff unsuccessfully brought similar claims. Doc. 78 at 3-4 n.2. At least one other court has described him as a "vexatious litigator." Id. at 4.

Pursuant to Local Rule 37.1, parties engaged in discovery disputes are required to promptly contact the court to seek resolution of such disputes without the expense and delay attendant the invariable result from the filing of motions to compel. That rule codifies the practice of attempting informal resolution of discovery disputes that I have followed for more than twenty years as a federal judicial officer. Implementation of the rule plays an important role in reducing delay; hence, I insist that it be followed by all parties, including parties proceeding, as is the plaintiff in this case, pro se.

Prior to contacting the court for informal resolution of discovery disputes, our local rule also requires parties to meet and confer in good faith to seek to resolve such disputes. The purposes of this rule is to ensure that recourse to the court is limited to instances in which there is a genuine dispute about material aspects of discovery. I consider compliance with this rule to be essential to the goal of reducing expense, delay, and uncertainty.

Plaintiff failed to comply with these rules before filing his motion to continue the discovery cutoff date and compel discovery and for sanctions. he refused to participate in a "meet and confer" with counsel on the grounds that he did not want a record to be made of the meeting, at which a court reporter was in attendance.

Plaintiff's refusal to permit a record to be made of his discovery conference was unjustified. Without expense to himself, plaintiff would have had a complete and accurate record of what was discussed, what was resolved, and what was left unresolved. His refusal to permit the record to be made was unjustified, and manifests a bad faith failure on his part to comply the meet and confer requirement. On that basis alone, his motion should be denied, and defendants' motion to strike should be granted.

In any event, plaintiff failed thereafter to contact the court to seek informal judicial resolution of his discovery disagreements with the defendants. Because he failed to do

so, his motion shall also be overruled on that basis, and defendants' motion to strike shall be granted.

Despite plaintiff's noncompliance with the local rules, which, at least in part, was willful and in bad faith, I have reviewed plaintiff's motion and defendants' objections thereto on their merits. I conclude that, aside from plaintiff's noncompliance with the informal resolution procedures mandated by our local rules, his motion should be overruled.

Plaintiff contends that his need to extend the discovery cutoff resulted from dilatoriness on the part of defendants' counsel in responding to his discovery requests. That allegation ignores his own failure to participate in the "meet and confer" process. Had he done so, the areas of dispute would have been narrowed, if not eliminated.

I note that this is not a case in which no discovery was provided; indeed, it appears that substantial responses were given to the plaintiff.

Plaintiff agreed to the discovery deadlines at the case management conference. Though he may thereafter have submitted interrogatories with a degree of promptness, he allowed the discovery process to become stalled when he failed to participate in the procedures mandated by the local rules. Accordingly he permitted the discovery cutoff to lapse without having taken any depositions, or otherwise having meaningfully progressed toward completion of discovery.

Timely attention to discovery deadlines is essential, particularly where no objection has been voiced to the time allowed to discovery, either at the outset, or once it appears that discovery cannot, despite due diligence, good faith, and compliance with pertinent rules relating to the resolution of discovery disputes, be accomplished fully and fairly within the prescribed period. Here, however, plaintiff filed his motion less than two weeks before the discovery deadline.

Though plaintiff may not bear all the blame for the fact that the period for discovery passed without his having obtained the information he seeks, he is primarily responsible for that circumstance. His motion to continue the discovery

deadline and to compel and for sanctions shall accordingly be denied on its merits. See generally Plott v. General Motors, Packard Electric Division, 71 F.3d 1190 (6th Cir. 1995); Wayne v. Village of Sebring, 36 F.3d 517, 530 (6th Cir. 1994)(not an abuse of discretion to refuse to extend discovery cutoff where party did not proceed with discovery diligently).

2. Defendants' Motions for Summary Judgment

Plaintiff claims that these defendants have: 1) violated the First and Fifth Amendments to the United States Constitution; 2) engaged in fraudulent and deceitful misconduct; 3) breached their contractual obligations; 4) violated their duty of fair representation; and 5) intentionally inflicted emotional distress. The defendants are entitled to summary judgment as to each of plaintiff's claims.

i. Constitutional claims

Plaintiff claims that these defendants have violated his constitutionally protected rights of free speech and free association and have engaged in improper takings.

None of the defendants is a state actor, thus, they cannot be held liable under 42 U.S.C. § 1983 for any putative constitutional violations. Messman v. Helmke, 133 F.3d 1042, 1044 (7th Cir. 1997). I agree with the decisions of other courts rejecting plaintiff's constitutional claims in other cases brought by the plaintiff. See Moore v. International Brotherhood of Electrical Workers Local 6, No. C01-03733 (N.D.Cal. 1/28/02)(Doc. 78, Exh.4). The reasoning and or result reached therein are adopted and incorporated herein.

ii. Fraud

Plaintiff claims that the defendants fraudulently deceived him by referring to allegedly unlawful deductions as employer contributions, thereby misrepresenting his wage and overtime rates. He also alleges that the defendants committed the tort of intentional infliction of emotional distress.

These are state claims that have been preempted by the

LMRA. See e.g., Martin v. Assoc. Truck Lines, Inc., 801 F.2d 246, 249 (6th Cir. 1986).

These claims are likewise preempted by ERISA, which expressly preempts state law claims "insofar as they relate to any employee benefit plan." See, e.g., Kentucky Laborers District Council Health & Welfare Fund v. Hope, 861 F.2d 1003, 1004 (6th Cir. 1988).

In any event, there is no merit to plaintiff's claim of intentional infliction of emotional distress: he has presented no evidence that the actions of the defendants were extreme or outrageous, as required under Ohio law. See, e.g., Deoma v. Shaker Heights, 68 Ohio.App.3d. 72 (1990).

iii. Breach of Contract and Breach of Duty of Fair Representation

Counts three and four of plaintiff's complaint allege violations of the Union Constitution and the defendants' duty of fair representation. These LMRA claims, even if meritorious, are timebarred. In DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), the Supreme Court held that claims of such breaches had to be brought within six months of their occurrence.

Plaintiff's complaint is based on acts occurring more than six months prior to the filing of the complaint in this case.

In addition, as the defendants argue, the plaintiff has failed to exhaust his internal union remedies, as he must before he may bring suit against the union or his employer. 29 U.S.C. § 185(a). See generally Republic steel v. Maddox, 379 U.S. 650, 652-53 (1965).

B. Defendant Funds' Motion

Plaintiff claims that when he travels and works for an employer with a collective bargaining agreement, that agreement does not apply to him. He contends, apparently, that each employer for whom he works must have a separate collective bargaining agreement applicable to him and his employment with that employer. Other courts have rejected

these claims. See Moore v. IBEW Local 58, no. 01-72222 (E.D.Mich. 3/18/02)(Doc. 78, Exh. 3); Moore v. International Brotherhood of Electrical Workers Local 6, No. C01-03733 (N.D.Cal. 1/28/02)(Id., Exh.4). The reasoning of and result reached by those courts are adopted and incorporated herein (sic).

Plaintiff's claims against the Funds suffer from the same defects as his claims against Local 8 and Duffey. Thus, as to plaintiff's constitutional claims, the Funds are not state actors, and cannot be held accountable for any putative breach of the defendant's (sic) constitutional rights.

Plaintiff's state law claims for fraud, breach of contract, and intentional infliction of emotional distress are preempted by the LMRA because they rely on or entail interpretation of the collective bargaining agreement and agreements adopted pursuant to the collective bargaining agreement. See, e.g., Northwestern Ohio Administrators, Inc. v. Walcher & Fox, Inc., 270 F.3d 1018 (6th Cir. 2001).

Plaintiff's state law claims for fraud, Central States, Southeast and Southwest Areas Pension Fund v. Mahoning Nat. Bank, 112 F.3d 252, 256 (6th Cir. 1997), breach of contract, Gordon v. Barnes Pumps, Inc., 999 F.2d 133, 137 (6th Cir. 1993), and intentional infliction of emotional distress, Metropolitan Life Ins. Co. v. Taylor, 481 U.s. 58 (1987), are, as well, preempted by ERISA.

Plaintiff's complaint does not allege a claim under ERISA, because the remedial provisions of that statute relate solely to recovery of benefits due under an ERISA plan, enforcement of rights under such plan, or clarification of rights to future benefits. 29 U.S.C. § 1132(a). These remedies are not subject to expansion or supplementation by state law remedies. See, e.g., Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 56 (1987). That plaintiff may be without a remedy for the wrongs allegedly inflicted on him is immaterial. See Corcoran v. United Healthcare, Inc., 965 F.2d 1321, 1338 (5th Cir. 1992).

C. Motion of Local 8 Retirement Plan and Trust Toledo Electrical Welfare Fund & Richard Clarson

Plaintiff named other benefit funds and another individual defendant in his complaint. These include the Toledo Electrical Welfare Fund, International Brotherhood of Electrical Workers Local 8 Retirement Plan and Trust, and Richard Clarson. Those defendants have not been served. Their motion for summary judgment shall, accordingly, be granted.

Conclusion

There is no merit to any of plaintiff's claims against any of the defendants. He has frequently brought similar claims against other unions. At least one other court has found him to be a vexatious litigator.

The time has come for the plaintiff to accept the fact that his claims are without merit. If he continues this fruitless, vexatious, and harassing litigation by either filing a motion for reconsideration or other pleadings in this case (now that it is being dismissed) or by appealing this order, I encourage the defendants to seek recovery of their attorneys' fees and costs. Likewise, if the plaintiff brings similar claims in the future against these or other unions and welfare funds, he should expect that he will be properly called on to show cause under Fed.R.Civ.P. 11, 28 U.S.C. § 1927, and the inherent power to sanction unfounded, vexatious, and harassing litigation to show cause why he should not be sanctioned through imposition of an award of fees and costs.

For the foregoing reasons, it is

ORDERED THAT:

1. Plaintiff's motion to continue the discovery cutoff, etc., be, and the same hereby is denied; and
2. The defendants' motions for summary judgment be, and the same hereby are granted.

So ordered.

Filed: NOV 13, 2002

James G. Carr
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore Plaintiff, v. Int. B'hood of Elect. Wkrs. Local 8, et al, Defendants.	)	CASE No 3:01-7556 JUDGMENT ENTRY

For the reasons stated in the Order filed on November 14, 2002,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that

1. The plaintiff's motion to continue the discovery cutoff, etc., be, and hereby is denied.

2. The defendants' motions for summary judgment be, and the same hereby are granted.

3. Case closed.

Filed: NOV 13, 2002

James G. Carr
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01-7556
	)	
Plaintiff,	)	
v.	)	ORDER
Int. B'hood of Elect.	)	
Wkrs. Local 8, *et al*,	)	
	)	
Defendants.	)	

An order was entered on November 14, 2002, granting the defendants' motions for summary judgment. (Doc. 96). By letter dated November 15, 2002, counsel for some of the defendants has notified the undersigned that portions of that order should be corrected. That suggestion appears well-taken.

1. Re. Section C.

Section C in the November 14, 2002, order shall be deleted, and a new Section C shall be substituted, as provided herein.

The following is hereby deleted from the November 14, 2002 order:

C. Motion of Local 8 Retirement Plan and Trust Toledo Electrical Welfare Fund & Richard Clarson

Plaintiff named other benefit funds and another individual defendant in his complaint. These include the Toledo Electrical Welfare Fund, International Brotherhood of Electrical Workers Local 8 Retirement Plan and Trust, and Richard Clarson. Those defendants have not been served. Their motion for summary judgment shall, accordingly, be granted.

and the following is substituted for the foregoing deleted material:

C. "Supplemental Fringe Benefit Fund" and "Toledo Electrical Benefit Plans board of trustees"

Plaintiff has named the "Supplemental Fringe Benefit Fund" and "Toledo Electrical Benefit Plans Board of Trustees" in the caption of his complaint. Those names do not refer to any legal entity With the capacity to sue or be sued. Suit against them cannot, accordingly, be maintained, and to the extent that plaintiff seeks relief from such entities, his complaint shall be dismissed with prejudice.

2. Inclusion of Local 8 Retirement plan and Trust, Toledo Electrical Welfare Fund, and Richard Clarson in Section B. as "Fund Defendants"

Counsel interpret the November 14, 2002, order to include the defendants Local 8 Retirement Plan and Trust, Toledo Electrical Welfare Fund, and Richard Clarson among the "Fund Defendants" whose motions for summary judgment are discussed and granted in Section B. That interpretation is correct, and is hereby confirmed. The order of November 14, 2002, is deemed amended to reflect that interpretation.

Conclusion

It is, accordingly, hereby

ORDERED THAT the order of November 14, 2002 (Doc. 96) be, and the same hereby is amended in accordance with the foregoing.

So ordered.

Filed: NOV 22, 2002

James G. Carr
U.S. District Judge

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Lawrence Moore	)	No. 02-16485
	)	
Plaintiff/Appellant,	)	D.C. No. 01-03733
v.	)	
Int. B'hood of Elect. Wkrs. Local 6, et al,	)	MEMORANDUM*
	)	
Defendants/Appellees	)	

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted May 13, 2003**

Before: CHOY, FARRIS, and LEAVY, Circuit Judges.

Lawrence Moore, proceeding pro se, appeals the judgment of the district court granting summary judgment to defendants. We have jurisdiction pursuant to 28 U.S.C. § 1291, and, upon de novo review, we affirm. Because the parties are familiar with the factual and procedural history of this case, we need not recount it here.

Moore asserts that the district court erred in dismissing his claims that the defendants violated the First and Fifth Amendments to the United States Constitution. The district court did not err in concluding that the defendant union and its individual officials are not state actors. Therefore,

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

Moore's claims alleging constitutional violations are not actionable. Lugar v. Edmondson Oil Co., 457 U.S. 922, 936-37 (1982).

Moore asserts that the district court erred in dismissing his claims against individual union officers for breach of contract and breach of duty of fair representation pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. The district court did not err in concluding that Section 301 provides the basis for an action for breach of contract or breach of the duty of fair representation only against a union as an entity. See Carter v. Smith Food King, 765 F.2d 916, 920-21 (9th Cir. 1985).

Moore asserts that the district court erred in dismissing his claims for fraud and intentional infliction of emotional distress. The district court did not err in concluding that Moore's claims were state law claims which are preempted by section 310 (sic) of the LMRA. See id. at 921.

Moore asserts that the district court erred in granting summary judgment for Local 6 on Moore's claims for breach of contract and breach of the duty of fair representation. Moore argues that Local 6 breached the IBEW constitution and the collective bargaining agreement by taking dues and pay from Moore, but not giving him a voice or vote on how those funds are spent. The district court did not err in determining that Moore did not state a claim as a union nonmember under Communication Workers of America v. Beck, 487 U.S. 735 (1988). Moore is a voluntary, longtime union member of International Brotherhood of Electrical Workers ("IBEW"). Moore worked for period of time through Local 6 of the IBEW in San Francisco, but did become a member of that local. However, at all times, Moore remained a member of IBEW. As such, he is not a "nonmember" similar to the nonunion employee plaintiffs in Beck.

Moore has also failed to state a claim for violation of the union's constitution under Wooddell v. IBEW, Local 71, 502 U.S. 93 (1991). The IBEW constitution sets forth specific

provisions regarding the rights and duties if a union member working in a different local union. Moore has failed to show that the IBEW constitution was violated regarding his choice to work through Local 6 in 1998 and 2000.

Both the breach of duty of fair representation and breach of contract claims are governed by the six-months statute of limitations period in section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). See Moore v. Local 569 of the IBEW, 989 F.2d 1534, 1542 (9th Cir. 1993). Moore worked through Local 6 in May and June 1998, and in March and April 2000. Moore should have known of any breach of the duty of fair representation or breach of contract when he completed the work through Local 6 ending in April 2000. Moore filed his complaint in October, 2001. Therefore, the claims for breach of contract and breach of duty of fair representation are, in any event, time-barred.

Moore asserts that the district court erred in denying him additional discovery pursuant to Fed.R.Civ.P. 56(f). The district court did not err in concluding that Moore's request for additional discovery would not shed any light on Moore's legal claims or uncover facts precluding summary judgment. United States Cellular Investment Company of Los Angeles, Inc. v. Mobilnet, Inc., 281 F.3d 929, 939 (9th Cir. 2002).

We have considered Moore's remaining arguments and find them to be without merit.

AFFIRMED.

Filed: AUG 07, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Lawrence Moore	)	No. 02-16485
	)	
Plaintiff/Appellant,	)	D.C. No. 01-03733
v.	)	Northern District
Int. B'hood of Elect.	)	of California,
Wkrs. Local 6, et al,	)	San Francisco
	)	
Defendants/Appellees	)	ORDER

Before: CHOY, FARRIS. and LEAVY, Circuit Judges.

The memorandum disposition filed on August 7, 2003, is amended as follows: on page 3, paragraph 1, line 10 should read: "...but did not become a member of that local...."

Filed: OCT 07, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	)	No. 03-3171
	)	
Plaintiff/Appellant,	)	D.C. No. 1:03-7556
v.	)	
Int. B'hood of Elect. Wkrs. Local 8, et al,	)	ORDER
	)	
Defendants/Appellees	)	

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on the other parties and the Court. This notice is to be prominently displayed in this decision if reproduced.

Before: BOGGS, NORRIS, and CLAY, Circuit Judges.

Lawrence Moore appeals a district court grant of summary judgment for defendants in this labor action filed under the Labor-Management Relations Act, 29 U.D.C. § 185, the national Labor Relations Act, 29 U.S.C. § 158, the Employees Retirement Income Security Act, 29 U.S.C. § 1001 et seq., and 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

Moore is a member of the International Brotherhood of Electrical Workers and is a traveler, or member "who works on a temporary basis within the geographical jurisdiction of a local union other than his own." *Local Union No. 948, (IBEW), AFL-CIO v. NLRB*, 697 F.2d 113, 114 & n.1 (6th Cir. 1982). Moore has a long history of litigating claims against his union and its locals. Recently, this court affirmed a district court judgment that dismissed a complaint virtually identical to Moore's complaint herein involving another union local. *See Moore v. Int'l Bhd. of Elec. Workers, Local*

58, No. 02-1503, 2002 WL 31056022 (6th Cir. Sept. 13, 2002), *cert. denied*, 123 S.Ct. 1272 (2003).

As in that case, Moore filed the instant complaint in the district court alleging that: (1) defendants violated his rights under the Free Speech Clause and the Takings Clause; (2) defendants committed fraud and deceit; (3) defendants violated the Collective Bargaining Agreement; (4) the union local and representative violated their duty of fair representation; and (5) defendants intentionally inflicted emotional distress. The Judicial Panel on Multidistrict Litigation denied Moore's request to transfer this case and yet another virtually identical action he filed in California. *In re Lawrence Moore/Int'l Bhd. of Elec. Workers Litig.*, 198 F.Supp.2d 1382 (J.P.M.L. 2002). Thereafter, defendants moved for summary judgment, and plaintiff responded in opposition. The district court granted summary judgment for defendants, and Moore filed a timely appeal.

On appeal, Moore contends that: (1) the defendant union and union funds are "state actors" for purposes of § 1983; (2) he has no obligation to pay dues to the defendant local union because he is not a member of the local; (3) the defendant supplemental fringe benefit fund is fraudulent; and (4) his claims otherwise are not preempted, subject to exhaustion of union grievances, or barred under the applicable statute of limitations. Defendants respond that the district court properly dismissed Moore's complaint. In addition, the defendant local union and individual defendant Dennis Duffy have filed a motion for sanctions against Moore pursuant to Fed.R.App.P. 38. Defendants Toledo Electrical Welfare Fund and individual defendant Richard Clarson also move for sanctions and ask that Moore be enjoined from filing further appeals in this court without prior court approval.

Upon de novo review, we affirm the judgment because Moore's claims on appeal lack merit for the reasons stated by the district court in *Moore*, 2002 WL 310566022, at *1-2. First, the district court correctly concluded that none of the

defendants is a "state actor" for purposes of 42 U.S.C. § 1983. *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991); *Messman v. Helmke*, 133 F.3d 1042, 1044 (7th Cir. 1998). Any claim for breach of the duty of fair representation is barred under the applicable statute of limitations. *See Adkins v. Int'l Union of Elec., Radio & Mach. Workers*, 769 F.2d 330, 335 (6th Cir. 1985). Plaintiff's state law claims are preempted under federal law insofar as they implicate a collective bargaining agreement or employment benefits. *See Cromwell v. Equicor-Equitable HCA Corp.*, 944 F.2d 1272, 1276 (6th Cir. 1991); *Martin v. Associated Truck Lines, Inc.*, 801 F.2d 246, 249 (6th Cir. 1986). Under these circumstances, Moore's claims lack merit.

Finally, defendants' motions for sanctions will be granted because Moore's appeal is frivolous. *See Wilton Corp. v. Ashland Castings Corp.*, 188 F.3d 670, 676-77 (6th Cir. 1999). The defendant local union and individual defendant Duffy seek attorneys fees and costs that relate to the period following a March 25, 2002, letter asking Moore to voluntarily dismiss his claims in the district court. However, only an award of attorneys fees attributable to this appeal and incurred after Moore filed his notice of appeal on December 13, 2002, and of double the moving defendants' other appellate costs is appropriate in this case pursuant to Fed.R. App.P. 38. Accordingly, both motions for sanctions are granted only to this extent. The motion to enjoin Moore from filing further appeals in this court without prior court approval is denied.

For the foregoing reasons, the motions for sanctions are granted, and the district court's judgment is affirmed. *See* Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT.

Filed: SEP 19, 2003

Leonard Green
Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01CV7556
	)	
Plaintiff,	)	
v.	)	ORDER
Int. B'hood of Elect. Wkrs. Local 8, et al,	)	
	)	
Defendants.	)	

This is a frivolous suit by a disgruntled union member against his local union, the President of the Local, and several benefit funds. Following a period of contentious and protracted discovery, the motions of all defendants for summary judgment were granted. The order granting summary judgment cautioned the plaintiff from continuing to pursue this litigation, either in this court or on appeal. Continuing to do so, this court admonished, would lead to an imposition of sanctions.

Plaintiff did not heed that advice. Instead, he appealed the summary judgment ruling to the Sixth Circuit. That court, basing its decision expressly on this court's order, upheld this court's decision. In addition, the Court of Appeals imposed sanctions pursuant to Fed.R.App.P. 38. *Moore v. Int'l Brotherhood of Electrical Workers, Local 8*, 76 Fed.Appx. 82, 2003 WL 22177181 (6th Cir.) (Unpublished disposition).

Pending are motions by the defendants for an award of sanctions, including attorneys' fees and costs, pursuant to 28 U.S.C. § 1927 and/or this court's inherent power to punish litigants who proceed in bad faith. The plaintiff has not opposed the motions, which are clearly meritorious and shall be granted.

The record in this case speaks for itself on the issue of plaintiff's bad faith, vexatious, and malicious purpose in instituting and maintaining this litigation. His claims lack any merit whatsoever. He was on notice of that fact from the outset, as a result of communications from opposing

counsel, and, as well, as a result of adverse decisions in other suits brought by him.

Nevertheless, plaintiff persisted, and his persistence must not be without its appropriate price. That price shall be an award in full of all reasonable costs, expenses, and attorneys' fees, including, inter alia, expenses and attorneys' fees related to pre-judgment discovery, preparation and filing of the motions for summary judgment, and preparation and filing of the instant motions and related affidavits for sanctions.

Defendants also request issuance of an injunction barring further litigation by the plaintiff without prior court approval. That order shall issue, and shall encompass all federal district courts, in view of the plaintiff's history of vexatious suits in this district and elsewhere.

In light of the foregoing, it is ORDERED THAT:

1. Defendants' motions for sanctions (Docs. 101, 102, 104, 106) be, and the same hereby are granted;

2. Defendants granted leave to file affidavits stating their reasonable costs, expenses, and attorneys' fees on or before November 26, 2003; plaintiff's opposition to be filed on or before December 20, 2003; and

3. The plaintiff Lawrence Moore be, and hereby is permanently restrained and enjoined from filing suit in this or any other federal district court without first obtaining prior leave to do so on a showing of good cause to believe that such suit is brought in good faith and states one or more colorable claims for relief.

So ordered.

Filed: DEC 6, 2003

James G. Carr
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	)	No. 03-3171
	)	
Plaintiff/Appellant,	)	D.C. No. 1:03-7556
v.	)	
Int. B'hood of Elect.	)	
Wkrs. Local 6, et al,	)	
	)	
Defendants/Appellees	)	ORDER

Before: BOGGS, NORRIS, and CLAY, Circuit Judges.

Lawrence Moore petitions the court to rehear its September 19, 2003 order in which the court affirmed a district court grant of summary judgment for defendants in this labor action. In addition, two additional defendants move the court for sanctions of attorneys fees and double costs against Moore, and the defendants who previously moved for sanctions move for an award of specific amounts.

Upon consideration, the panel concludes that it acted under no misapprehension of law or fact that warrants a rehearing. See Fed.R.App.P. 40(a). Accordingly, the petition for a rehearing is denied. Finally, defendants motions for sanctions will be granted because Moore's appeal is frivolous. *See Wilton Corp. v. Ashland Castings Corp.*, 188 F.3d 670, 676-77 (6th Cir. 1999). An award of attorneys fees and of double the moving defendants' other appellate costs is appropriate in this case pursuant to Fed.R. App.P. 38. Accordingly, the motions for sanctions are granted.

ENTERED BY ORDER OF THE COURT.

Filed: DEC 10, 2003 Leonard Green
Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01CV7556
	)	
Plaintiff,	)	
v.	)	ORDER
Int. B'hood of Elect.	)	
Wkrs. Local 8, et al,	)	
	)	
Defendants.	)	

Pursuant to prior order awarding sanctions in the form of attorneys' fees and costs to the defendants (Doc. 108), the defendants have submitted affidavits detailing the time expended and amounts billed to defendants for their services.

The plaintiff has not filed a response to those affidavits. On review I find the time spent by defendants' counsel on this frivolous suit and counsels' hourly rates to be reasonable. The same is true with regard to the other costs paid by the defendants.

It is, therefore

ORDERED THAT attorneys' fees and costs be awarded for the defendants and against the plaintiff in the amounts of: 1) $43,193.75 for attorneys' fees and expenses for services rendered to defendants by the firm of Cosme, D'Angelo, Szollsi, Company L.P.A., 2) $100,676.00 for attorneys' fees and $5,333.68 expenses for services rendered to defendants by the firm of Eastman & Smith, and 3) $13,942.50 for attorneys' fees expenses for services rendered to the defendants by the firm of Allotta & Farley; all with interest thereon to accrue from the date of this order.

So ordered.

Filed: JAN 26, 2004

James G. Carr
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	No. 04-3013
Plaintiff/Appellant,	D.C. No. 1:03-7556
v.	
Int. B'hood of Elect. Wkrs. Local 6, et al,	ORDER
Defendants/Appellees	

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on the other parties and the Court. This notice is to be prominently displayed in this decision if reproduced.

Before: MARTIN and MOORE, Circuit Judges; BUNNING, District Judge.*

Lawrence Moore, an Ohio resident proceeding pro se, appeals a district court's grant of attorneys' fees and costs in a labor action filed under the Labor-Management Relations Act, 29 U.S.C. § 185, the National Labor Relations Act, 29 U.S.C. § 158, the Employees Retirement Income Security Act, 29 U.S.C. § 1001 et seq., and 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

Following a grant of summary judgment to defendants in this case the district court awarded the defendants attorneys' fees "pursuant to 28 U.S.C. § 1927 and/or this court's inherent power to punish litigants who proceed in bad faith." Moore appeals the grant of attorneys' fees and costs in the

* The honorable David L. Bunning, United States District Judge for the Eastern District of Kentucky, sitting by designation.

above case arguing that: (1) his claims were not brought for an improper purpose; (2) he cannot be sanctioned under 29 U.S.C. § 1927; and (3) he was not provided notice of a hearing before the court sanctioned him.

Federal courts may exercise inherent powers to award attorneys' fees in "narrowly defined circumstances." *Tiedel v. N.W. Mich. Coll.*, 865 F.2d 88, 93-94 (6th Cir. 1988). When an attorney or litigant has demonstrated bad faith in the conduct of litigation, the court has the inherent authority to assess and award of attorneys' fees. *See Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765-66 (1980). Imposition of sanctions comes from the court's power to police itself, so that a court can vindicate its authority without resorting to a finding of contempt of court. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991). If the district court uses its inherent powers to sanction, it must find that the questioned conduct constitutes or is tantamount to bad faith. *See Roadway Express, Inc.*, 447 U.S. at 767. The award of attorneys' fees and costs will not be reversed absent an abuse of discretion. *See First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 510 (6th Cir. 2002).

In this case Moore has filed nearly the same baseless lawsuit at least three times and has previously been sanctioned by various district courts for his litigious conduct. Furthermore, Moore was notified by opposing counsel and in the adverse judgments against him that his claims lacked merit and yet he continued to pursue his claims. The district court in this case specifically stated that it considered Moore's claims "fruitless, vexatious, and harassing," and brought in bad faith. While Moore argues that he was not given notice of the possibility of sanctions or an opportunity to be heard, the record reflects that the district court notified Moore that it was considering sanctions and the defendants filed motions for sanctions to which Moore failed to respond. Under the circumstances in this case, the district court did not abuse its discretion when it awarded attorneys' fees to the defendants.

For the foregoing reasons the district court's order is affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT.

Filed: DEC 08, 2004 Leonard Green
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	)	No. 04-3013
	)	
Plaintiff/Appellant,	)	D.C. No. 1:03-7556
v.	)	
Int. B'hood of Elect.	)	ORDER
Wkrs. Local 6, et al,	)	
	)	
Defendants/Appellees	)	

Before: MARTIN and MOORE, Circuit Judges; BUNNING, District Judge.*

Upon consideration of the appellees' motion for attorney fees and double costs.

It is ORDERED that the motion be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT.

Filed: JAN 07, 2005 Leonard Green
Clerk

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* The honorable David L. Bunning, United States District Judge for the Eastern District of Kentucky, sitting by designation.

United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Cincinnati, Ohio 45202-3988

Geri M. Smith
Northern District of Ohio at Cleveland
801 W. Superior Avenue, Suite 100
Cleveland, OH 44113-1830

RE: 04-3013
Moore v. Intl Brotherhood
District Court No. 01-07556

Enclosed is a copy of the mandate filed in this case. The certified record was never sent to this Court on appeal.

Filed: JAN 25, 2005

Leonard Green
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	)	No. 04-3013
	)	
Plaintiff/Appellant,	)	D.C. No. 1:03-7556
v.	)	
Int. B'hood of Elect.	)	MANDATE
Wkrs. Local 6, et al,	)	
Defendants/Appellees	)	

Pursuant to the court's disposition that was filed 12/8/04 the mandate for this case hereby issues today.
No costs taxed. A true copy.

Filed: JAN 25, 2005

Attest: Valerie Fields
Deputy Clerk